

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WIGBERTO VIERA,

Petitioner,

v.

S. BARLETT,

Respondent.

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Case No. 1:24-CV-49

MEMORANDUM ORDER

This petition for writ of habeas corpus was received by the Clerk of Court on February 24, 2024. The matter was assigned and referred to Chief United States Magistrate Judge Richard A. Lanzillo, for report and recommendation in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges.

Petitioner, an inmate in federal custody, challenges his conviction and sentence in light of the United States Supreme Court's decision in *United States v. Davis*, 588 U.S. 445 (2019) and *Bailey v. United States*, 516 U.S. 137 (1995).

On January 23, 2025, Judge Lanzillo issued a Report and Recommendation recommending that the petition be dismissed for lack of jurisdiction. ECF No. 13. Judge Lanzillo further explained that no certificate of appealability determination would be made “because ‘federal prisoner appeals from the denial of a habeas corpus proceedings are not governed by the certificate of appealability requirement.’” *Id.* at p.6, n.6.

No objections to the Report and Recommendation have been filed by either party. “If a party objects timely to a magistrate judge's report and recommendation, the district court must

‘make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made.’” *EEOC v. City of Long Branch*, 866 F.3d 93, 99 (3d Cir. 2017) *quoting* 28 U.S.C. § 636(b)(1). Regardless of whether timely objections are made, district courts may accept, reject, or modify—in whole or in part—the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Local Rule 72(D)(2).

After *de novo* review of the petition and other filings in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 14th day of February 2025;

IT IS ORDERED that the petition for writ of habeas corpus is dismissed with prejudice for lack of jurisdiction.

IT IS FURTHER ORDERED that the report and recommendation of Chief Magistrate Judge Lanzillo, issued on January 23, 2025 [ECF No. 13] is adopted as the opinion of the court.

/s/ Susan Paradise Baxter
SUSAN PARADISE BAXTER
United States District Judge